



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)

Petter Bragd et al.)

Application No.: 09/651,127)

Filed: August 30, 2000)

For: ABSORBENT STRUCTURE IN AN)
ABSORBENT ARTICLE AND A)
METHOD OF PRODUCING IT)

Group Art Unit: 3761

Examiner: CATHERINE L.
ANDERSON

Confirmation No.: 1058

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is filed in response to the Examiner's Answer mailed on November 2, 2007. The Reply Brief is filed in response to comments in the Examiner's Answer and to address the U. S. Patent & Trademark Office guidelines interpreting the *KSR* decision.

Status of Claims

Claims 1-4, 6, 11-12 and 15-18 are the pending claims and stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over *Graef* (U.S. Patent No. 6,518,479) in view of *Rezai* (U.S. Patent No. 5,713,881). Claims 1-4, 6, 11-12 and 15-18 are presently appealed. A copy of the claims involved in the appeal is contained in an attached Claims Appendix of the Appeal Brief.

Grounds of Rejection to be Reviewed on Appeal

Whether claims 1-4, 6, 11-12 and 15-18 are unpatentable under 35 U.S.C. §103(a) over *Graef et al.* (U.S. Patent No. 6,518,479) in view of *Rezai* (U.S. Patent No. 5,713,881).

Argument

The arguments set forth in the Appeal Brief filed on July 5, 2007 are incorporated by reference.

Since the filing of the Appeal Brief, the U.S. Patent and Trademark Office has issued its guidelines for interpreting the KSR decision (hereinafter "Guidelines"). Accordingly, Appellants take this opportunity to address how the Guidelines impact the issues of this Appeal.

It appears that the Examiner's argument for combining *Graef* with *Rezai* is based on rationale B, set forth at page 57530 of the Guidelines. Rationale B includes four requirements, one of which is set forth in paragraph (3). Paragraph (3) requires the Examiner to show that the results of the proposed substitution would be predictable.

In the Examiner's Answer, the Examiner bases an expectation of success on the false understanding that the cellulosic foam of *Rezai* is made **of** fibers. In the Examiner's Answer, the Examiner states on page 4 that:

"It is noted that the regenerated cellulosic foam taught by *Rezai* is made **of** regenerated rayon fibers, as disclosed in column 21, lines 23-24. One of ordinary skill in the art would recognize that since the cellulosic foam taught by *Rezai* is **made of fibers**, the cellulosic foam could be substituted for cellulosic fibrous material with a reasonable expectation of success of forming the stratified, commingled layers of *Graef*." Page 4, paragraph (10).

This statement of the Examiner is based on a factual misunderstanding of the *Rezai* teaching, and of the nature of regenerated cellulose, such as viscose. Instead

of the *Rezai* foam being made **of** fibers, as explained below, the cellulosic foam of *Rezai* is made **from** fibers. As set forth in the last paragraph on page 3 of the pending application, to make the cellulosic foam, known as viscose, cellulose sulfite pulp is allowed to swell in sodium hydroxide. Carbon disulfide is then added "at which the cellulose is successively dissolved." Since the cellulose is dissolved in the process of making the foam, the foam described in *Rezai* is a foam. It is not fibrous, as alleged by the Examiner. Since the *Rezai* foam is made **from** fibers, not **of** fibers, the Examiner's support for the suggestion to substitute the *Rezai* foam for the cellulosic fibrous material of *Graef* is based on a factual misunderstanding.

Therefore, the Examiner's alleged "reasonable expectation of success" is based on the misconception that the *Rezai* foam is fibrous. Thus, there is no basis for alleging that there is an expectation of success of forming the stratified commingled layers of *Graef* using the *Rezai* foam.


Accordingly, the basis for combining the two applied references is based on a factual misunderstanding of the applied prior art. As such, there is no reasonable expectation of success and the results of the substitution would clearly not be predictable. Thus, the Examiner has provided no evidence regarding paragraph (3) of Rationale B of the *KSR* Guidelines.

Accordingly, the rejection of the claims in the pending application must be reversed.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: 12-28-2007

By: 
William C. Rowland
Registration No. 30888

P.O. Box 1404
Alexandria, VA 22313-1404
703 836 6620